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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GOLD RIDGE APARTMENTS OWNER,
LLC,

Plaintiff,

v.

RENEE EPPERLY,

Defendant.

No. 2:20-cv-00129-JAM-EFB

**SUA SPONTE ORDER REMANDING
ACTION TO STATE COURT**

The undersigned revokes any actual or anticipated referral to a Magistrate Judge for the purposes of Findings and Recommendations in this case. See Local Rule 302(d) ("Notwithstanding any other provision of this Rule, a Judge may retain any matter otherwise routinely referred to a Magistrate Judge.").

On January 17, 2020, Defendant Renee Epperly filed a Notice of Removal with this Court, seeking to remove an action from the Sacramento County Superior Court. Notice of Removal, ECF No. 1. For the following reasons, the Court sua sponte REMANDS this case

1 to Sacramento County Superior Court.

2 Under 28 U.S.C. § 1441(a), a defendant may remove an action
3 to federal court if the district court has original jurisdiction.
4 Hunter v. Phillip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)
5 (quoting Ansley v. Ameritrust Mortg. Co., 340 F.3d 858, 861 (9th
6 Cir. 2003)). If at any time before final judgment it appears
7 that the district court lacks subject matter jurisdiction, the
8 case shall be remanded. 28 U.S.C. § 1447(c). Generally, a
9 defendant seeking to remove an action to federal court must file
10 a notice of removal within thirty days of receiving a copy of the
11 initial pleading. 28 U.S.C. § 1446(b). The defendant seeking
12 removal of an action to federal court has the burden of
13 establishing federal jurisdiction in the case. California ex
14 rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2004).

15 Here, Defendant attempts to invoke the Court's federal
16 question jurisdiction. Notice of Removal at 2. Defendant argues
17 that this Court has jurisdiction because Plaintiff's complaint
18 "was filed in retaliation against Defendant for her attempting to
19 exercise her [First Amendment] right." Id. at 2. Federal courts
20 are courts of limited jurisdiction and lack inherent or general
21 subject matter jurisdiction. Federal courts can adjudicate only
22 those cases authorized by the United States Constitution and
23 Congress. Generally, those cases involve diversity of
24 citizenship or a federal question, or cases in which the United
25 States is a party. Kokkonen v. Guardian Life Ins. Co., 511 U.S.
26 375 (1994); Finley v. United States, 490 U.S. 545 (1989).
27 Federal courts are presumptively without jurisdiction over civil
28 actions. Kokkonen, 511 U.S. at 377. Lack of subject matter

1 jurisdiction is never waived and may be raised by the Court sua
2 sponte. Attorneys Trust v. Videotape Computer Prods., Inc., 93
3 F.3d 593, 594-95 (9th Cir. 1996). "Nothing is to be more
4 jealously guarded by a court than its jurisdiction. Jurisdiction
5 is what its power rests upon. Without jurisdiction it is
6 nothing." In re Mooney, 841 F.2d 1003, 1006 (9th Cir. 1988).

7 The Ninth Circuit has held that the removal statute should
8 be strictly construed in favor of remand and against removal.
9 Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir.
10 2005). The "strong presumption" against removal jurisdiction
11 means that the defendant always has the burden of establishing
12 that removal is proper. Nishimoto v. Federman-Bachrach &
13 Assocs., 903 F.2d 709, 712 n.3 (9th Cir. 1990); Emrich v. Touche
14 Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988). Federal
15 jurisdiction must be rejected if there is any doubt as to the
16 right of removal in the first instance. Gaus v. Miles, Inc., 980
17 F.2d 564, 566 (9th Cir. 1992).

18 In determining the presence or absence of federal
19 jurisdiction in removal cases, the "well-pleaded complaint rule"
20 applies, "which provides that federal jurisdiction exists only
21 when a federal question is presented on the face of the
22 plaintiff's properly pleaded complaint." Caterpillar Inc. v.
23 Williams, 482 U.S. 386, 392 (1987). Moreover, "it is well
24 established that plaintiff is the 'master of her complaint' and
25 can plead to avoid federal jurisdiction." Lowdermilk v. U.S.
26 Bank Nat'l Ass'n, 479 F.3d 994, 998-99 (9th Cir. 2007); Metro.
27 Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987) (citing Gully v.
28 First Nat'l Bank, 299 U.S. 109 (1936)) ("It is long settled law

1 that a cause of action arises under federal law only when the
2 plaintiff's well-pleaded complaint raises issues of federal
3 law.").

4 In this case, Defendant is unable to establish jurisdiction
5 before this Court because the complaint filed in the state court,
6 19-UD-06481, contains a single cause of action for unlawful
7 detainer. Unlawful detainer actions are strictly within the
8 province of state court. A defendant's attempt to create federal
9 subject-matter jurisdiction by adding claims or defenses to a
10 notice of removal will not succeed. Vaden v. Discover Bank, 556
11 U.S. 49, 50 (2009) (federal question jurisdiction cannot "rest
12 upon an actual or anticipated counterclaim"); Valles v. Ivy Hill
13 Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) ("A federal law
14 defense to a state-law claim does not confer jurisdiction on a
15 federal court, even if the defense is that of federal preemption
16 and is anticipated in the plaintiff's complaint."). As such,
17 Defendant's attempt to assert a First Amendment retaliation
18 defense to Plaintiff's unlawful detainer action does not give
19 rise to federal question jurisdiction here.

20 The Court REMANDS this case to Sacramento County Superior
21 Court for all future proceedings. Defendant's motion to proceed
22 in forma pauperis, ECF No. 2, is DENIED as moot. The Clerk of
23 the Court is directed to close this case.

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26 Dated: January 17, 2020

/s/ John A. Mendez

HONORABLE JOHN A. MENDEZ

United States District Court Judge